

SOS-CACEO Conference Call September 19, 2007

Attendance:

Alameda	Sacramento
Alpine	San Benito
Butte	San Bernardino
Contra Costa	San Diego
El Dorado	San Francisco
Fresno	San Joaquin
Glenn	San Luis Obispo
Humboldt	San Mateo
Inyo	Santa Barbara
Imperial	Santa Clara
Kern	Santa Cruz
Lake	Shasta
Los Angeles	Siskiyou
Madera	Sonoma
Marin	Stanislaus
Mariposa	Sutter
Mendocino	Tehama
Mono	Trinity
Monterey	Tulare
Napa	Tuolumne
Nevada	Ventura
Placer	Yolo
Plumas	Yuba
Riverside	

Secretary Debra Bowen

Agenda

HAVA 301 & Other Contract Issues: As you know the Governor signed the state budget on August 24th, and the Department of Finance sent the Revised HAVA Spending Plan, which has all of the new 301 voting system contracts, 261 polling place accessibility money and 303, which is the contracts for Inyo, Napa and Tehama to move to a new EMS. Those all went to the Joint Legislative Budget Committee on August 31st. The JLBC has 30 days to approve the plan and if it does not act the Plan is automatically approved. Everything I'm hearing is that the Spending Plan will be approved without comment and the 30 day mark is September 29th, which is a Saturday. So it will all be official on Monday, October 1st. Then all the contracts will have to be signed by you and approved by your Boards of Supervisors if that is required in your county. Once we have the signed agreements back than any contract for over \$50,000 is sent to the Department of general Services for review and approval, and

after that my office can execute the contracts. Chris Reynolds tell me that the entire process, beginning at the point that Department of Finance send the HAVA Spending Plan to the JLBC until the time we have fully executed contracts with all the counties should take about 60 days, so that means we are about one-quarter of the way through the process right now. After the JLBC approval, the next step is for us to send new contracts to counties for signature and that step will begin after the approval is formal. That should happen the week of October 1st. We will send an electronic copy and put a hard copy in the mail to each county that needs a new contract or contracts. Also, the deadline to submit claims for costs incurred before the June 30th contract expired is September 30th. O if you had expenses that were incurred under the previous contract, you have until September 30th to get the claims in. I understand from Chris Reynolds that he and Kay have been in touch with nearly every county now, as a reminder, but there are still a few who need to confirm the status of claim submissions. So if you are owed money, don't wait for us to call, please call us, and let's get the documents in so that we can do the reimbursement.

Pending Voting System Certifications: There are three new certifications at the office, and a T2B Review certification issue that I want to update you on. The testing of the Diebold GEMS II system that has been designed for Los Angeles County is proceeding. Much of the functional testing has been conducted as has some of the Red Team testing, and the Source Code Review is now getting underway. That's a system that has come in since the T2B Review was completed.

ES&S: many of you are waiting for ES&S' new AutoMark system, and ES&S has still not completed its application. ES&S did submit an application prior to the July 1st deadline but basically put two systems together in one application, and so the SoS staff has spent a couple of months trying to get ES&S to decide what exactly it wants to have tested and we have not yet received amended applications from the company. So there is no testing for either the new AutoMark system or the new San Francisco ranked choice voting system scheduled yet.

The third testing piece has to do with ES&S' InkAVote Plus system. This is a system that was to be included as a part of the T2B review but ES&S did not get the materials, parts and codes to us. On Friday, ES&S finally delivered the final piece of its equipments, so testing will now begin on that system.

Revisions To Top-To-Bottom Review Recertification Agreements: First thank you to those who submitted questions and thoughts on the Recertification documents. There are probably a dozen or so changes that I will be making to the documents in the next couple of weeks in response to issues that you, the vendors and others have raised. And I want to walk through what some of the changes with you.

- First, we will clarify that one additional DRE may be kept at each polling place for redundancy and to create voter access cards.
- Second, we'll clarify that there is no requirement to have at least... there is no requirement o have at least five voters cast ballots on a DRE if NO voter has

done so on Election Day. I'm told that there are some precincts in which there is a DRE in which historically no one has voted on it.

- The changes will clarify that an employee who is required to monitor voting equipment in an early voting scenario shall have no other duties while monitoring the equipment, but that the person who is doing the monitoring can be changed during the day; it doesn't have to be the same person all the time. But the intent is that someone who's monitoring the equipment should not have another job they are trying to do simultaneously.
- We will clarify that the manual tally process mentioned in the recertification documents is that described in EC 15360.
- We will clarify that the type of network connection prohibited does not refer to the hardware on a machine, but rather a network connection may not be established with a voting machine.
- We will eliminate the requirement that audit logs be posted at a polling place.
- Clarify that poll workers may participate in audits of results from a precinct other than the one in which they were a poll worker.
- Clarify that Registrars do not have to provide a privacy sleeve for absentee ballots.
- Correct a mistake with reference to touch screen machines which have to use write-once media and not write-only media.

They are technical and clarifying, and we should get these out sometime also in the next couple of weeks. The goal was to have all the changes in one document, again for ease of reference, rather than having a stream of amendments.

CACEO Questions: Right before the last conference call we had, Steve had asked five questions that had come in just, too close to the call for me to take a look at. But, and I've just actually covered some of those, but I want to walk through them specifically, anyway.

First, he asked, "Is there a difference between a manual count audit, a manual count and a manual audit? Please clarify." Answer: no, there is no difference between the three terms and that will be made clear in the revised recertification documents.

Two: "If post election audits and/or parallel monitoring show a zero error rate for Feb 5th, is there a possibility of more than one DRE being deployed in an election?" Well, I would never say never, but, we are concerned not just with accuracy but with security, and the problem was that the security that is engineered into the systems is just not sufficient. So having one election where having very few votes are cast on the DRE be accurate isn't a reason to cast aside the security concerns.

Steve Weir, Contra Costa – What if you get a couple hundred thousand votes cast on the DREs?

DB – Well, then we'll look at that. But again, I think the problem is the security is just not built in, and it really takes me into the next question, which is

Three: What is required to regain full certification, for both systems. And I think it's likely to require a new version of the equipment. During its testimony at the public hearing, Sequoia said on at least a half a dozen occasions that it was aware of various flaws that the Red Team had identified and that it either had fixed them or was working to fix them in the new version of its system. And Diebold similarly has told us that they were aware of some of the problems and that they would be corrected. So I think that the next level of review for these systems will come when flaws that have been identified have been corrected.

Four: What happens if a precinct does not get five voters to volunteer to vote on the DRE? As I noted earlier, we will provide that if no one votes on it, that you don't need five voters. Right now counties using the Diebold TsX have to ensure three people vote on the machine if one person votes on it in order to ensure voter privacy. I have not been, ah, no one's called to my attention any situation in which that three voter rule is a problem; however it has been called to my attention that particularly in some local races that three voters would not be sufficient to protect voter privacy. Five was an effort to try to do a better job with voter privacy. But again, if no voter has used the machine at all, there's no privacy to protect, and therefore no need to try to get people to vote on the system.

Steve Weir – It just doesn't make sense. I mean, you're mandating something that may look good on paper, but there's not a person that's listening to this call that's going to say, I can make that work.

DB – I have not had any evidence that in the counties that have the three voter rule with the Diebold TsX that's it's been a problem. No one's come forward to me and said, this is a problem.

Christy Robles, Mono – What if we have only two people in our small county voting on that DRE?

DB – Well, then, you know, we'll all do our best to do it. We're asking people though, if you've got a DRE, ask one of your poll workers to vote on the DREs, to vote towards the end of the day.

Steve Weir – You told the whole world that these things aren't any good, and then you're telling our poll workers or want us to tell our poll workers, go do this. It looks good on paper, but...

DB – I didn't tell the world they weren't any good, I said that there were significant security risks, and the reason to reduce the usage to one per precinct is to reduce the security risk, so, that's different than they're not any good.

Janice Atkinson, Sonoma – We have used one DRE plus our paper-based system since the beginning, and our procedures are set up in such a way that it is impossible to know who is, who cast a ballot on the DRE. If that is the case, is there any reason to force voters who do not want to vote on the DRE to do so.

DB – Explain to me how it is that the DRE vote is not obviously different.

Janice Atkinson – OK. The voters go in and vote at the polling place. The way we do this in our county, and two other counties, is the voters sign into a regular roster, whether you vote your paper ballot or the DRE. They go in and they cast their ballot

either by paper or DRE. We back at the office have no idea who voted on the DRE; the poll workers never see the vote cast on the DRE.

DB – But presumably the poll worker does know which person walked to the DRE.

Janice Atkinson – yes, they know. The poll worker knows who voted on the DRE, the poll worker never has access to the vote that was cast on the DRE. It stays sealed in the equipment, and is not printed out or revealed until that equipment comes back to our office. And then, at our office, and in our case, our combined/blended procedures, we duplicate that vote onto our paper ballot and count it with the rest of the votes. So, when we see that vote, we have no idea who voted that vote.

DB – Alright, well, you may have a different process. I don't think most of the counties that use DREs remake the ballot as a paper ballot in order to count it that way.

Carolyn Crnich, Humboldt – We do in Humboldt. We use exactly the same system that Janice uses.

DB – Then we'll review that; this is the first time that this issue has been raised.

Placer – Placer does.

Carolyn Crnich – It's in our procedures.

DB – We'll look at how we want to handle that in a situation in which at the point of counting the ballot is made – and the privacy issue has been that even people in the central office, employees don't know which was which it was possible to identify votes, and the privacy requirements are pretty strict.

Janice Atkinson – I'd be happy to answer any questions your staff might have in reviewing this.

DB – Alright. Everyplace where we've had an issue that's been raised, you know, this is how this works, I think we've been able to deal with it to the satisfaction of counties. So it looks like we need to continue to work on this one.

Candace Grubbs, Butte- While we don't make them, I would like to review with you our procedures, because it's impossible for a precinct officer to know nor do they care what the vote is on the machine. They're certainly not back in our office, they've gone home for the evening, so I'd like to take a look at those with your staff.

DB - we will look again at the procedures that deal with the number of votes that have to be cast on a DRE. I think you all understand the concerns; we want to do it in a way that doesn't make more work but that always does protect voter privacy. Counties, you'll have to tell me, for those of you who are doing this, how you are handling the requirement that you post the vote that was cast on the machines, because if they're posted, it's relatively easy to figure out from someone who went to that polling place.

Carolyn Crnich – We don't post, because those votes are not tallies at the polling place, and that, too, is in our procedures.

DB – But they are posted elsewhere, right? They're posted downtown?

Carolyn Crnich – When the votes are actually counted, the votes are duplicated from the paper audit trail onto a optically scanned ballot and then they are included in the rest of the count.

DB – It sounds like there's more than one situation. If you're re-making the ballot onto a optical scan ballot, then we may have a different situation, so, we'll look again at that.

Carolyn Crnich – We'd be happy to work with you on that.

Barbara Dunmore, Riverside – Can I just ask for clarification? So in February, when we have all paper ballots at the polls, and one DRE, are we going to be required to post the DRE at the polls?

DB – That is what the law requires. And that's one of the privacy concerns,

Steve Weir – The fact that we're having this conversation three months before voting starts is indicative of the fact that you don't understand the impact from the counties' standpoint, because you haven't involved us in the process. And at this late-

DB – Steve, I involved you in the process.

Steve Weir – At this late date, we're now sitting here trying to discuss with you, not minutia, but things that are everyday occurrences for us, and I just have to register my concern that at this late date we're having discussions about things that Registrars do as everyday parts of our process, and you're not clear on it.

DB – You know, we used as a model, the existing certification for the Deibold TsX, it requires three votes to be cast on a DRE. Nobody, gee, we can't do this, we haven't been able to meet that requirement, and there are many counties –

Steve Weir – We've raised this question every time we've had a chance to discuss it with you.

DB – Well, we've continued to talk about it and we will continue to talk about it.

Steve Weir – What we'd like to know is what our voting system is going to look like on the 5th of February, and to know about it sooner than later, and we simply do not know, nor do I think you know, what that is going to look like for us. We need to get to the point where you have an understanding of what you want from us, and we're going to attempt to follow your lead on this. But telling us that we are going to hear about it in another couple of weeks leaves me very uncomfortable.

DB – Well, as you know, any place where we can work with Registrars, and that was any place after the Source Code Review and the Red Team Review which required reviewers to sign non-disclosure agreements, and you know, some of you have said over and over to the press that you weren't included on the team, knowing full well that you weren't included because I was not included and I couldn't have a Registrar sign a non-disclosure agreement to review the software of another vendor.

Steve Weir – Didn't need to. And respectfully submitted, we've not been included in the process.

DB – Well, I think we set that aside and go forward, you've been greatly involved in the audit standards, in the security planning, we've asked everyone to submit security plans, and to work cooperatively, and we will continue to do that. Now I want to say, that we model, for all of our voters, how conflicts are resolved. And in every stage of this, I have modeled a model in which I have always treated every registrar with respect, I have never said anything negative to the press or elsewhere and have always said that to the activists, encouraged them not to blame registrars, told them that I believe that registrars have always made the best possible choices they could with the information that they had. I will continue to do that, I think a few of you were on the conference call I did on Monday; I am encouraging the people who are concerned about this and active to be involved, to be poll workers, to come watch the counts, to meet with registrars or registrars staff if they have questions. And I think that we all have an obligation to everyone to try to get through what is undoubtedly a difficult series of changes. And it does mean, as we make changes, that it will be an iterative process.

That's actually in the nature of democracy, you learn from each other as you go along and you adjust and make things work better. That's my goal. Let me go back to the conditions.

Five: Clarification of a two-person rule. The recertification documents mention the two-person rule in two places, I believe. One is that vendors have to develop requirements and use procedures for programming, pre and post election logic and accuracy testing, transporting and operating equipment in a way that will prevent or deter unauthorized access to or modification of any component of the voting systems, and (2) counties in their poll worker training must include chain of custody procedures that include use of the two-person rule for voting equipment and polling place supplies. The two-person rule is a system designed to require at all times of at least two authorized persons each capable of detecting incorrect or unauthorized procedures with respect to the task to be performed. Now I know this issue has come up recently in the sleepover context, and whether it means for example, that sleepovers are banned entirely, or that two people have to sleep in the garage with a voting machine.

First let me say that I have always considered a sleepover to be... there's no definition of it, and one of the problems we're having, I think, is not everyone means the same thing – I have considered it to be an event where machines went home with poll workers, days or even weeks before an elections and there were no chain of custody or secure storage requirements imposed. To the point where some people reported driving around with machines in their car. So I was asked on Monday night on a conference call whether sleepovers were permitted, and that's the type of activity that I was thinking about when I said that sleepovers are not permitted under the recertification documents. Now, it is clear that the idea of delivering every machine on the morning of election day is not practical either in a large county, or especially in areas of the state where during the February 5th election there may very well be snow or rain or both. So we will have to work on the two-person rule, on secure storage, and on the requirements for delivery that ensures that machines are securely stored. I know that Placer County has a good idea with the tamper-evident bags that were brought to the July hearing in Sacramento, and one other county has recently brought up the idea of using bankers bags, again with the idea that tampering would be evident. The vendors are required to include this kind of plan as a part of their security plan and I know that counties are working on this as well. But I don't consider this to be done either – remember, I took office in January, not everything can be done instantly, and all of this requires consultation and feedback. Es, it would have been wonderful if we didn't have an election till June, it would have been great if the review had been done in March, but it just simply wasn't possible. So, I think we all need to just work to get it done.

Bill Schultz, El Dorado – We use a rather unique method of disbursing the machines that, I don't want to go into everything here on the conference call, but if one of your staff would like to contact me, I'd like to discuss it with them so they could run it by you. DB – OK. That's exactly the kinds of things that, we actually did a meeting internally yesterday in the office about this issue, and you know, looking for the kinds of things

that counties are doing that we might be able, so that we might be able to create a list of mechanisms that can be used or might just be able to take something that you are doing already and with a fairly minor adjustment make it continue to work. The security plans from the vendors were to be submitted to my office by yesterday, and all three of the vendors have complied. So, again, this is an iterative process and we learn by doing it, I'm not Moses and I never expect to bring things to you on tablets, I do appreciate the feedback, we need to work together, and rather than have set draft security standards in talking with the vendors it's probably best to have a security checklist template for counties to use. And I think that would probably be most useful for smaller counties, although there may be some larger counties who wish to do it as well.

Gail Pellerin, Santa Cruz – Can I just be very clear – maybe because I'm a little simple minded or something, just to be very, very clear, if a voting unit meets the requirements for security in your view, as far as bagging it, tamper-proof locking it, some how, then it would be acceptable for us to check it out the days before the election to our Inspector, who would be picking it up alone, signing for it, and then bringing it home to their home, locking it their house, and then putting it in their car on election morning and driving it the polling site where two other poll workers, other than the person responsible for the machine, sign off on all security seals and locks and that nothing has been tampered with.

DB – I am not at all certain that that's going to be sufficient. We're looking basically...

Steve Weir – With all due respect-

DB – May I finish please?

Steve Weir – Well, no.

DB – We don't need to have a conference call if we're not going to have a respectful discussion.

Steve Weir – We actually asked to meet with you privately because we are so concerned about the fact that we are at this stage and we still don't have answers and we're not getting an answer to the question today.

DB – I want to make this really clear because this was all over elec_net, and this request for a private meeting was made less than 24 hours before this call and it was suggested that it be in lieu of this call. My answer was not no, we won't meet privately, nor was it... but it was, I don't want to stop doing these calls, nor was 24 hours enough notice in this particular situation. So, you didn't bother to tell people that you didn't ask for this meeting until yesterday.

Steve Weir – Except we asked for the meeting a month ago.

DB – Ah, not to my knowledge. We did have a meeting set up, you asked a month ago if we could put the lobbyists on the call, and again I suggested that a separate meeting would probably be better.

Steve Weir – That's it.

DB –Well?

Cathy Darling, Shasta – And there was no separate meeting.

DB – Well, I believe the lobbyists came and I don't know what happened after that.

Evan, do you know?

Evan Goldberg – Barry and Di and Jim came in and met with staff and then they had asked if a meeting with any ROVs would be possible and I said yes, please get in

contact with us with a date, yesterday afternoon was the first contact we've had on a request for a meeting with the Secretary.

Cathy Darling – Do you mind if I interrupt just for a moment? I think Steve is expressing on behalf of many of us the frustration that we are feeling and the frustration is a direct result of the fact that we know intimately how little time is left between now and February. And it seems patently obvious that, quite frankly, you do not have that same sense of urgency. We do not want to fail in February, but this situation is leading to that being almost guaranteed in some county.

DB – I beg to differ with regard to the sense of urgency, there are people who are still working many hours, a lot of people had to spend an enormous number of 80 hour days just trying to get the testing set up so we could do the GEMs testing, we spent a lot of time trying to push ES&S to get the InkAVote system in, and it would be actually very helpful for ES&S counties to push ES&S to get the AutoMark, the new AutoMark system in for testing. I can't review something that I don't physically have. So I don't think that's accurate, I'm happy to have a meeting, we said yes, if it was left at someone needs to call to follow up, and that didn't happen, well, we'll set that up now.

Steve Weir – Is there a limit on who can attend the meeting?

DB – you know, we can figure out the best way to do it. I don't start with a bunch of limits, it's just how do we get things done, and sometimes as you go along, you figure that there's a better way to get things done than how you had planned. I think that's definitely been the case with some of the security standards where I deliberately did not deliver a set of requirements in the recertification because I knew that we were going to be working with counties and that things would be very different from county to county, and that we would not be able to create a one size fits all standard. So, in order to have that kind of work together, it means you have to allow more time to do it.

Gail Pellerin – So the answer to my question was no?

DB – As I said, we are right now in the process of trying to determine what will satisfy an exception – what you are asking for is an exception to the two-person rule, right?

You're describing situation in which they're not always two people.

Gail Pellerin – The two-person rule as defined in what code section?

DB – It's not in a code section, it's been a standard of how security has been done with voting systems for a long time. The question has to be what mechanisms can we agree will be sufficient to allow exceptions to the two person rule. And that is the question that is going to be on the table in the next couple of weeks, I expect to hear from counties with regard to what they're doing that they think works. But remember that the review showed that the security seals on this equipment were readily bypassed.

Gail Pellerin – I wasn't referring to that. I'm looking at something along the lines of placers, like what kind of additional security layer – a bag, or something, could we do?

Db – That is exactly the same question that I tried to put on the table a few minutes ago, let's look to see how this might be done with the least possible disruption to current procedures.

Gail Pellerin – If we can bag it and secure it, it would be ok for it to spend the night at an Inspector's house?

DB – I think we have to find a way for equipment to spend the night someplace other than in the central office. There's simply no way, particularly in large counties and in

rural counties that we're going to have poll workers coming in at 2:30 in the morning to pick up equipment.

Carolyn Crnich – Thank you.

DB – how those requirements work is going to a matter for all of us to work together to figure out in the next couple of weeks, however, the answer is not going to be poll workers have to come in the morning to pick everything up or somebody has to hire a Brinks truck to go out. We have to find a practical mechanism that allows us to handle security to deal with the fact that security seals on the equipment were found not to be sufficient.

Janice Atkinson – I'm just attempting, I believe, to clarify what may be a misconception or misperception. I'm the oldest living election official in California, well Candy Lopez is here too and she's pretty old. The two-person rule has historically referred to the possession of voted ballots. Prior to the time voting equipment is used, ballots are voted, there has never, in my 35 years of election experience, been a two-person rule requirement. It is not defined anywhere, it isn't historical practice, it has never applied to unvoted ballots or equipment that has not been used.

DB – I appreciate that, because I don't know where it came from. It certainly is in a lot of places. But we have had, in the last few years, a clear shift from concern just with post-election materials to pre-election materials, and that's actually critical when you're talking about voting equipment where tampering can occur before an election as well as after and election. So, it's just, we're in a different situation when we talk about removable media that can...that a... and voting systems where secrecy of what how the machine operates is one of the parts of the levels of security. We are in a different world than we were in certainly when everything was on paper.

Gail Pellerin – So these security requirements you do not apply to paper ballots?

DB- No, we also will be having a discussion about the best way to deal with security of paper ballots. I think we also have an obligation to assure paper ballots. The situation is a little different though, because you are, because the paper ballots are at the end of the election day, tallied up and counted so you are less concerned whether paper ballots that are not voted have ...

Gail Pellerin – I'm hitting the panic button here, I really feel like we need to meet, you know, we put together a group of people representing each of the voting systems, I think it's time that they meet with your staff and these issues get resolved, because we are out of time.

DB – I'm, again, have said yes to that previously and the meeting didn't happen, and I do think that's it's most useful-

Gail Pellerin – Let's set up that meeting right here and now.

Steve Weir – We have a group of 14 that we've nominated to represent the voting systems, and I think that you would benefit as would your staff, in meeting with them either separately or together to talk about the very specifics that we are dealing with. And Secretary Bowen, again, all due respect, the reason I did my email yesterday was that we had heard your speech over in Marin county and then we saw the transcript of your presentation indicating that you had made a decision on this, and we had to read about it.

DB – Actually it wasn't a decision, it's not anything that I don't think is in the standards, Steve. I take that as an integral part of what's in the standards. I don't know how you

can have security and argue that your, that if you've got equipment that has to be kept secret, how you can guarantee that if it rides around in the back of somebody's car. Steve Weir- but we're hearing about this yesterday, and today we asked the question a month ago, and you-

DB – You did not ask the question a month ago.

Steve Weir – Sure we did, it was our fifth question.

Gail Pellerin – I sent questions on August 23rd, I haven't heard back. I sent another email yesterday just asking when I could expect a - we've got a lot of people on hold right now who are doing training videos, putting together manuals, and we're just waiting to get some clarification. I think it's time we have a person to person meeting. Let's resolve this.

DB – That's fine, I would suggest we do it by vendor rather than all together, because it's hard to work in very large groups.

Gail Pellerin – Can we set those meetings up starting next Monday?

DB – It's Jane Steele in my office who will work to get the time set.

Gail Pellerin – Can we expect a call from her today.

DB – Let's work with Steve, I think it's best if we work with Steve to do the setup, that way we have a clear understanding of who's going to be doing it on each side. Is that acceptable Steve?

Steve Weir – You know, I've got a medical issue coming up here in about a half an hour, and I actually would prefer to go with my executive board to work on this.

DB – I want a specific person though.

Steve Weir – Rebecca Martinez.

DB – OK, fine. Then we will work with Rebecca Martinez to get meetings set up.

Steve Weir- Alright, thank you.

DB- In the interim, I think it would be very helpful, then, for people who have specific ways that they work on the security and distribution in their counties to provide my staff with as much information...

Jim McCauley, Placer – Along those lines, do you think it might be possible, where you might be able to send up a staff member up to Placer county so I can show you all the things that we have done and are doing to make the election more secure and transparent.

DB – I can't promise that-we actually have, one of the problems that I have, and I'm sure it's one that you all have to, is that we actually have a very small staff. The Secretary of State's office total has 475 people, but 80% of them are corporate business filings and notaries and so forth. So the number of people who actually work in elections is very small.

Jim McCauley – If there were something set up where I could set up a meeting with you and bring up a lot of the stuff up.

DB – We certainly can do that, I wish that I could get personally to every county in the next two months, if possible, whenever I am near your county for everyone where I've been someplace, you know that I've come and actually gone through with you. I've done that everywhere where I've been. So we will just do our best and I think that you did a good demonstration of how the bag works, and that's actually been one of our starting points. I thought it was a pretty clever way to help solve the problem of having lots of different ports and stuff. But, again, I don't want to over promise, I don't know

that I can get staff to every place, so, I do this it would be useful though to sit down and we'll book some conference table time and we'll work through this, the security issues. Also, the vendor's security plans came in on Monday and Tuesday of this week. We just got them in the office, I have not had a chance to read them myself, but those will be a part of the discussion, I'm sure. Evan, do you know if the vendors sent the security plans to their clients?

Evan Goldberg – I don't know that. I'm looking around to Lowell and Debbie, I don't believe they did.

Elaine Ginnold, Marin – We got ours from Diebold.

Elaine Larson, Santa Clara – Sequoia got theirs.

David Tom, San Mateo – Hart got theirs.

DB – So that means you all have the vendor security plans. Alright. So it would be very helpful for you to go through the vendor security plans from the practical standpoint, and say, if there's something that you think doesn't work. Or if there's something that is missing.

Linda Roberts, Mono – We didn't hear you talk about the Sequoia voting system under the pending voting system certification, so is that something that you can maybe go back to at the end?

DB – I'm not sure what the question is.

Linda Roberts – Well, you talked about ES&S and Diebold under your second agenda item, Pending Voting Systems Certifications, but we didn't hear you talk about Sequoia.

DB – Sequoia doesn't have a system that is pending certification. Sequoia, as I understand it has a new version of its system, I don't even know where it is-

Gail Pellerin – At the federal level is my understanding.

DB – Do you know, Debbie, Lowell, is it in federal testing?

Lowell Finley(?) – Yes, it's in the federal pipeline, and Sequoia has indicated to us that once that's completed, assuming its approved there, that they intend to bring it in for state certification, but that would not be until sometime in the Spring or Summer of next year.

DB – So I think the fair assumption is that if it doesn't come in obviously until March or April or even later you certainly aren't going to be using it in February, and it's unlikely that it would be usable in June.

Barbara Dunmore, Riverside – Yesterday, we went to our board to purchase 400C optical scanners, and the Board turned down that request because they're waiting on your recertification of Sequoia equipment, and I know that Sequoia, I believe, has submitted all of their documentation. Is there any timeline for when their equipment has been recertification for February so we can move forward with our purchase?

DB – I'm not clear on the question.

Evan Goldberg – let me just jump in here because I think maybe I can help. The recertifications require the vendors to comply with the security plans. So, technically, until the Secretary determines that the vendors have submitted complete or adequate security plans, I guess technically the recertification probably doesn't hold.

DB – You're talking about the conditional recertifications based on the security plans.

Evan Goldberg – So the Secretary still has to make a decision that, yes, the conditions have been met by the vendor and therefore the systems can be used on February 5th. I

mean, this applies across the board but it's come up in the context of Sequoia scanners as a result of what Ms Dunmore just described in Riverside.

DB – The answer is that the security plans came in this week, Monday and Tuesday. The Sequoia one actually came in a little earlier. Before I accept those, I want to hear from the counties that are going to have to deal with what's there.

Christy Roberts, Mono – So as it stands, Mono County's DREs, Sequoia's machines, as not usable for the February election.

DB – They are conditionally recertified and not all the conditions have yet been met. So, yes.

Christy Roberts – So, as it stands, we're using paper ballots with our Insight machines from Sequoia.

DB – that's not what I would assume is going to happen. I fully assume that all of the vendors will meet the security plan requirement.

Christy Roberts – I'm just stating that I have Insights for Mono County, to use for the paper ballots, and I'm under the assumption that that is what I can use for the February election – is that correct?

DB – I just wouldn't make the assumption that you won't be able to use the equipment that requires a – in fact, all of the recertifications require an approved security plan.

Christy Roberts – Right, so it's my understanding to use one DRE at each poll and various other requirements, but we have Insights for the paper ballots, and I need clarification for our Board that I am able and authorized to use those Insights for the February election.

DB – Would you mind doing a 2 or 3 sentences description of that and putting it in an email or a letter so that we can be absolutely clear? That we have the same question and that we don't have a misunderstanding because we were doing it on a conference call?

Christy Roberts – Ok, yes, thank you very much.

DB – And it should go to Lowell Finley. We want to try to have in the vein that Steve suggested in the last conference call, of having one person be the contact for each thing. When it deals with voting systems it should be Lowell. Let me go back to the timing on the security plans – they just came in, I would like to hear from you, we will be reviewing them, it will be my goal to have decisions made and I don't have any reason to suspect that there will be anything other than a thumbs-up by the first of October. So that means I have a very short time frame within which to hear from you if you think there's anything in your vendor's security plan, and this is the collective you, not just the you, Barbara. This is all of you: please read your vendors' security plan, if you think there's something in it that is not workable, I need to know that before it becomes the approved plan that's a condition of certification.

Barbara Dunmore – Thank you.

Keri Verjil, San Bernardino – I had the same question that Barbara had about the use of the 400c vote counting units that we have already purchased. Would it best if I just sent an email with my question? Will I be able to use those in February?

DB – If you have equipment-specific questions and then you want to be able to take the answer to your Board, let's do that in writing. That way you have something and you can rely on it, and we're all very clear. I'm expecting a flood of emails.

Keri Verjil – Thank you.

DB – Let me return to – we’re through security, we have the plans, we will be developing checklists, we need to know from you if there’s anything in the plan that is not workable, and that leaves just

Post-Election Audit Standards: At the end of August, I released a draft of new requirements for your review and feedback with a September 15th deadline. I did receive input from a number of counties, and from a number of other people, thank you for those of you who took the time to provide comments and suggestions. We’re now in the process of going through the comments, many of the comments suggested ways to clarify and improve the auditing requirements, and on this issue the staff contact is Jenny Brettschneider in my office. So that’s the person, if you have specific questions about the audits. There are a couple of legal issues that came up that I would like to address. One of them has to do just more generally with the difference between what’s in statute, what is in regulation, and what is a condition of certification. Obviously there are no statutory changes that have gone into effect with regard to voting systems. I also have not promulgated new regulations, although, as I have said to you in the past, I do believe that many of the things that we’re doing should go into regulation. That is a more rigorous process that has a public comment period, and we will begin work on that after we’ve gotten through the questions about, ah, to prepare us for next year. The conditions that we’re talking about, the security plans, the audits and so forth are conditions of certification. So they are legally required in order to be able to use the equipment. The Secretary of State’s ability to impose conditions of certification is actually been tested in a court case, and the Secretary has the legal authority to impose conditions.

Candace Grubbs, Butte – If they don’t make any sense?

DB – Well, it’s your job to make sure that they do.

Candace Grubbs – You don’t understand our procedures, that’s the problem.

DB – Well then help me understand them.

Candace Grubbs – And you’re listening to people that don’t understand it either. We have not have one DRE in this state that ever counted wrong. And yet you have enlisted procedures that don’t make any sense.

Db – Actually we’ve had across the county many DREs that have-

Candace Grubbs – But not in California, we talking California, we’re not talking Florida or anywhere else.

DB – You may want to think about how we got ourselves into the energy crisis, and in August-

Candace Grubbs – We’re not in an energy crisis.

DB – But the point is we don’t want to be in a crisis and if we see that there have been problems in other states why wouldn’t we take action that prevents-

Candace Grubbs – Because we have procedures here that precluded those issues from happening, and that’s what I feel that your staff does not understand, or you have not tried to understand.

DB – We have a difference of opinion and I think we leave it at that.

Candace Grubbs – The problem is the conditions of certification that you’ve put out there are impossible to do. They don’t make any sense, they’re going to cost an

immense amount of money, and frankly are a mandate for which the Legislature is going to have to pay for.

DB – they're actually not a mandate, they're a condition of certification.

Candace Grubbs - They're still a mandate.

DB – You can use whatever equipment you want

Candace Grubbs- You can use whatever you –

Elaine Ginnold – Let's continue with this call.

DB – We clearly have a difference of opinion as to what's appropriate but it is my responsibility to make that decision and you can disagree with it and I-

Candace Grubbs – Shouldn't it be your responsibility to understand what we do, and we've done it well for years? It can't be a one sided street here.

DB – I'll leave that-

Candace Grubbs – Not one DRE has counted wrong, and you have imposed such restrictions, that – and even on this audit procedures, that are absolutely crazy. Why should we have to do 100% hand count? That doesn't make any sense.

DB – It may not make any sense to you, we have a difference of opinion. I think it's best to leave it at that.

Unknown female – Secretary, I'm sorry to interrupt, I want to suggest that we work through the rest of the agenda and then take questions because I know a lot of the ROVs have to leave for other meetings.

DB – So, where we are with, but I do want to clarify that legally these are conditions of certification. And so if you don't comply with them, if your vendor doesn't comply, then you're not using certified equipment. So that is how the conditions of certification work. Let me work through the specific comment that have come in on the audit system. First we need to clarify that the reference to spoiled ballots should be damaged ballots, and I think there are a few others, similar provisions that deal with definitions. There are a number of specific things that deal with auditing, and I think that rather than go through all of them right now we will continue to work to take into consideration the comments that have been made with regard to the audit standards.

Security Standards

Letter To EAC: on the funding for various costs. As I noted on last call I have asked the EAC for guidance on the use of Title II finds for T2B review costs, and whether counties that still have money can buy new voting equipment even if they have already spent HAVA money on a voting system. Unfortunately all IA have to report is that the EAC says that it has received the letter and that it has also received similar requests from a number of other states. So, I believe, rather than answering our letter specifically the EAC will be formulating a policy to guide all states on this question. So I don't have an answer for that.

ES&S Hearing: Let me update you on the ES&S hearing. As you know, from the CCROV that went out on Monday, there will be a Public Hearing on October 15th, in the Secretary of State's Auditorium in Sacramento to take comment before a decision is made on whether to seek relief against ES&S for selling and deploying modified

AutoMark devices without notifying or getting authorization from the Secretary of State as is required by Elections Code 19214.5. The date was moved from September 20th to October 15th just in order to make sure that all of the legal i's were dotted and t's were crossed. I have offered ES&S the opportunity to make a presentation and answer the questions I don't know whether they will do that or not. As we talked about at the last call, I am trying to deal with this violation, or apparent violation of the law in a way that doesn't disadvantage the five counties that purchased this equipment without having any way of knowing that it wasn't certified.

Questions

Elaine Ginnold – I wanted to ask you about the AutoMark issue. Are you working on any way that we could use these for our November election, the AutoMarks that we have, some kind of a dispensation to allow us to use them?

DB – Well, where are we on the November election?

Elaine Ginnold – Well, we have a county-side election-

DB – No, I know, a number of the counties do. And I think a couple of counties have made arrangements to borrow equipment that is certified, I don't have my notes in front of me on what the counties are doing.

Elaine Ginnold – I know that some counties are looking at that. I was just wondering if you would consider taking any emergency action.

DB – The problem I have is that I can't – the equipment hasn't gone through certification, and it's too bad that ES&S didn't make the request up front.

Elaine Ginnold – ok. Well, we can absolutely not use them then?

DB – I don't want say that at this point, I think we need to find a way to make sure that all five of the counties that have this equipment can conduct elections. We've been working with counties individually on this issue.

Bev Ross, Tehama – You kind of skipped over, you said there were some legal issues with the post election audit standards, are we going to be receiving something on that in the very near future? Hopefully?

DB – Jenny, status?

Jenny Brentschneider – Status of when they'll be finalized? We're trying to follow the same schedule as the security plans process is following, so we hope to have them out by October 1st.

DB – Changes in the post election audit standards really are – but you know, the comments are very helpful, because if we for example as we did in the security plans or audit plans I think we used three different terms to mean the same thing, and we had a comment I think from Steve, maybe from someone else that pointed out that we used different terms, and that's the kind of place where it's very helpful to have other sets of eyes looking at stuff. So comments have closed but if you see something that you think needs to be addressed, Jenny is still working on that and trying to get that sorted out.

Candy Lopez, Contra Costa – Can you clarify for us, that you do not feel the conditional certification or the audit standards, are an executive order.

DB – They are not an executive order, they are conditions of certification.

Candy Lopez – And so therefore, even though they will cause tremendous cost to the county, you feel that the state is in no way obligated to pay for doing these additional things?

DB – You know, no one's asked the question of whether it's a state funded mandate, I haven't looked at that or not, and I don't know whether it makes a difference whether an executive order or regulation or a condition of certification. But they are conditions of certification. I think that's one where you probably want to ask your County Counsel.

Candy Lopez – I really feel like there are huge costs associated with the mandates in the conditional certifications, and the new mandates in the post audit procedures, and its not that we don't want to do our utmost to comply, but I think it needs to be established the state intends to pay for any of these mandates, and that your Legislators know they are obligated to pay for the mandates, that it is not going to fall back on the counties to pay for this.

DB – Well, I'll have a look at the funding but I don't believe that the state is obligated. It is, however, my goal with all of this, including the cost of the February election, to include as much as we can in the costs that are reimbursed by the counties. Let me go back, and we'll have a look at the cost issue specifically, and sort out what falls within the costs that normally are reimbursable by the state.

Candy Lopez – Well, Secretary Bowen, these would be ongoing after February they would, I take it, apply to June since they'll –

DB – Right, I understand, but February's the first election, so I thought we would start with that.

DB – Any other questions? Then I think that the next step is to set up the meetings to deal with the security issues and I'm anticipating that that will be done on a vendor by vendor basis. If through conversing with Rebecca Martinez we determine that there's a better way to do that, then I will expect that she will get approval to do it in a different way.

Dean Logan, Los Angeles – Secretary Bowen? Just a suggestion for consideration on that. I'm not sure that there shouldn't be also some consideration too-

DB – large and small?

Dean Logan – Yes. I'm not sure that vendor by vendor would necessarily get where we need to get on this.

DB – Well, you remember in the very first conference call we had about the security standards I expected that we would have variations and the reasons that I didn't just write them and hand them out to everyone is I expected that we would have two kinds of variations: vendor based and large and small counties based, and that the medium sized counties would have to decide whether they were more like a small county or more like a large county for that purpose. I concur, but let's consult with Rebecca Martinez in Steve Weir's stead, and try to determine what the best way is – I do think that there's a big difference between small county and large county procedures, there's no question that the kinds of procedures that Tehama uses or Los Angeles County uses, if you tried to impose those on Tehama County they would be ridiculous. So there is going to be a difference just based on – not only the size of the county but the number of people who work in the elections office. We have some counties where there

are only a handful of people who work in the elections office, and we want to make sure that everything we do is workable in those counties. We've actually had some discussions privately with those counties already and, again, we'll welcome a discussion with a particular county that has a particular solution or need. We have 58 different counties, we don't have uniform equipment, we don't have uniform procedures, we never have, I don't think we're likely to anytime soon, and that means a lot of work on an individual basis.

Jill Levine, Sacramento – What about the state wide database RFP? Is there an update on that? Nothing beyond where we were the last time, I think that the procurement documents are coming close to being released, I don't know when the last time the stakeholders group met was, Evan, do you know?

Evan Goldberg – I don't recall when the stakeholder group met last, but I do know the RFP is on target to go out mid- to late-October. It has to go to the Department of General Services, it will be reviewed and sit for a few weeks, and then it's going to hit the street.

DB – I'll find out, I'm not sure if it's gone to the Department of General Services yet or not. For any of the things we do, like the contracts, time delays are a results of needing to age in an oak casket in the Department of General Services.

Rebecca Martinez – Will I be hearing from Jane Steele today?

DB – It will either Jane, or some of what we're doing it's not scheduling, it really is determining how we want to set up the policy group, so I think you're probably likely to hear from a combination of Evan and Lowell before we get to Jane and the calendar.

Evan, Lowell?

Evan/Lowell – Sure, yes.

DB – One or the other or both, as we work through how to set up the groups. Yes, today, this afternoon.

Rebecca Martinez – Provided cell number.

DB – Alright. I will be talking to many of you I'm sure within the couple of weeks as we work through the security plan stuff and we will continue to do the conference calls but I want to encourage people if you have specific questions or if you've got something you need to take to your Board or questions from your Board, don't wait until there's a conference call. Email or call and let us have as much time as we can to try to work through it and get you an answer.

Next Call

In keeping with the goal of conducting this monthly call on the third Wednesday of each month, the next call will be scheduled for Wednesday, October 17, at 10:00 a.m.

Respectfully submitted
Cathy Darling
Shasta County Clerk/RoV
CACEO Secretary